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16 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

17 WILLISTON INVESTMENT GROUP, LLC,
18 Plaintiff,

19 vs.
JPMORGAN CHASE BANK NATIONAL
20 ASSOCIATION; et al.,
Defendants,
21 and
22 FEDERAL HOUSING FINANCE AGENCY,
Intervenor.

Case No. 2:14-cv-02038-GMN-PAL

**STIPULATION AND [PROPOSED]
ORDER SEEKING A FINAL
JUDGMENT PURSUANT TO RULE
54(B)**

23 FEDERAL HOME LOAN MORTGAGE
24 CORPORATION,

Counterclaimant,

25 and
26 FEDERAL HOUSING FINANCE AGENCY,
Intervenor,

27 vs.
28 WILLISTON INVESTMENT GROUP, LLC;
and DESERT LINN CONDOMINIUMS,
Counter-defendants.

1 Plaintiff Williston Investment Group, LLC (“Williston”), Defendant Federal Home Loan
2 Mortgage Corporation (“Freddie Mac”), Intervenor Federal Housing Finance Agency, as
3 Conservator for Freddie Mac (“FHFA”), Defendant JPMorgan Chase Bank N.A. (“Chase”),
4 Defendant Mortgage Electronic Registration System (“MERS”) and Counter-Defendant Desert Linn
5 Condominiums (“HOA”), hereby stipulate the following:

- 6 1. On October 21, 2014, Plaintiff filed an action in state court asserting the following
7 claims:
 - 8 a. A claim for wrongful foreclosure against Chase and MTC;
 - 9 b. A claim for declaratory relief and quiet title against Chase, MERS, MTC, and
10 Freddie Mac;
 - 11 c. A claim for slander of title against Chase, MTC, and Freddie Mac; and
 - 12 d. A claim for injunctive relief against Freddie Mac. *See* Dkt. No. 1-1.
- 13 2. In their responsive pleadings, Freddie Mac and FHFA each filed two substantively
14 identical counterclaims:
 - 15 a. A quiet title counterclaim against Plaintiff; and
 - 16 b. A declaratory judgment counterclaim against both Plaintiff and the HOA. *See*
17 Dkt. Nos. 13, 41.
- 18 3. The forms of relief associated with these two counterclaims were declarations that (1) 12
19 U.S.C. § 4617(j)(3) preempts a Nevada statute that could otherwise permit an HOA
20 foreclosure sale to extinguish Freddie Mac and FHFA’s property interest; (2) the HOA
21 foreclosure sale at issue here did not extinguish Freddie Mac and FHFA’s interest in the
22 Property; and (3) the HOA foreclosure sale did not convey the subject property free and
23 clear to Plaintiff. *Id.*
- 24 4. Freddie Mac also asserted a counterclaim against Plaintiff for unjust enrichment. *See*
25 Dkt. No. 13.
- 26 5. Chase and MERS also asserted counterclaims against Plaintiff and the HOA. *See* Dkt.
27 No. 13.

1 6. On February 25, 2015, FHFA and Freddie Mac filed a Joint Motion for Summary
2 Judgment. *See* Dkt. No. 44. The summary judgment motion sought the relief discussed
3 in both the quiet title and declaratory judgment counterclaims asserted by FHFA and
4 Freddie Mac—a declaration that (1) 12 U.S.C. § 4617(j)(3) preempts any Nevada law
5 that could permit an HOA foreclosure sale to extinguish a property interest of Freddie
6 Mac while it is under FHFA’s conservatorship; and (2) the HOA Sale did not extinguish
7 Freddie Mac’s interest in the Property, and thus Plaintiff took an interest in the Property
8 subject to the Deed of Trust. *See* MSJ at 14. This requested relief was materially the
9 same as requested in Freddie Mac and FHFA’s quiet title and declaratory relief
10 counterclaims, providing for the opposite declaration as that Plaintiff requested in its
11 quiet title claim.

12 7. On May 7, 2015, Chase and MERS filed a Joinder to FHFA’s and Freddie Mac’s Motion
13 for Summary Judgment. *See* Dkt. No. 58.

14 8. On July 13, 2015, this Court issued an Order granting the summary judgment motion of
15 FHFA and Freddie Mac. Dkt. No. 75. The Order held, among other things, that (1) “the
16 HOA’s foreclosure sale … did not extinguish Freddie Mac’s interest in the Property
17 secured by the Deed of Trust;” and (2) “the HOA’s foreclosure sale … did not …
18 convey the Property free and [clear] to Williston. *Id.* at 7.

19 9. The Order also held that “12 U.S.C. § 4617(j)(3) preempts Nevada Revised Statutes
20 § 116.3116 to the extent that a homeowner association’s foreclosure of its super-priority
21 lien cannot extinguish a property interest of Fannie Mae or Freddie Mac while those
22 entities are under FHFA’s conservatorship.” *Id.* at 6-7.

23 10. The Order incorporated this Court’s reasoning in *Skylights LLC v. Byron*, No. 2:15-cv-
24 00043-GMN-VCF, 2015 WL 3887061 (D. Nev. June 24, 2015). That Order concluded
25 that Skylights and “the plaintiffs in the related cases”—including Williston—“all
26 purchased real property subject to FHFA’s lienhold interest” *Id.* at *7 n.4.

27 11. The Order denied the relief requested in Plaintiff’s declaratory relief / quiet title claim,
28 because it held that the Deed of Trust was not extinguished. Indeed, the Order explicitly

1 said that summary judgment was granted “on Williston’s claims for quiet title.” Dkt.
2 No. 75 at 7.

3 12. But the relief granted in the Order also resolved other claims that were not specifically
4 mentioned in the conclusion of the Order. The conclusion of the Order made the
5 declarations requested by FHFA and Freddie Mac and determined that Plaintiff’s interest
6 was purchased “subject to FHFA’s lienhold interest,” thereby granting the relief
7 requested in:

8 a. FHFA, Freddie Mac, Chase and MERS’s declaratory relief counterclaims; and
9 b. FHFA, Freddie Mac, Chase and MERS’s quiet title counterclaims.

10 13. The parties acknowledge that not all claims in this case were resolved by the Order.
11 Specifically, the following claims remain outstanding:

12 a. Plaintiff’s claim for wrongful foreclosure against Chase and MTC;
13 b. Plaintiff’s claim for slander of title against Chase, MTC, and Freddie Mac;
14 c. Plaintiff’s claim for injunctive relief against Freddie; and
15 d. Freddie Mac, Chase, and MERS’s counterclaim for unjust enrichment against
16 Plaintiff.

17 14. Notwithstanding the persistence of these claims, the Parties request that the Court enter a
18 judgment reflecting the Court’s Order and designate it final and appealable pursuant to
19 Federal Rules of Civil Procedure 54(b) and 58(a). The Parties believe that this would be
20 the most efficient path to the resolution of the issues in this case, in particular because
21 the nature of the Court’s Order makes it pointless to pursue any of the remaining claims
22 at this time. For example:

23 a. Freddie Mac, Chase, and MERS’s counterclaim for unjust enrichment against
24 Plaintiff is only viable if the Court had determined that Plaintiff had obtained free
25 and clear title to the Property to the detriment of Freddie Mac, Chase, and
26 MERS. See Dkt. No. 16 ¶ 37. The Order determined that Plaintiff did not obtain
27 free and clear title, so the unjust enrichment claim is effectively moot. If,

however, the Ninth Circuit overturned the Court's Order on appeal, then there would be a renewed basis for pursuing the unjust enrichment counterclaim.

b. Similarly, Plaintiff's claims for wrongful foreclosure, slander of title, and injunctive relief are all premised on the allegation that the HOA Sale extinguished the Deed of Trust. *See Dkt. No. 1-1 ¶¶ 54, 71, 82.* The Order determined that the HOA Sale did not extinguish the Deed of Trust, so if Plaintiff were to pursue these claims now, the law of the case would require their dismissal. If, however, the Ninth Circuit overturned the Court's Order on appeal, then there would be a renewed basis for Plaintiff to pursue its wrongful foreclosure, slander of title, and injunctive relief claims.

15. A final judgment is necessary for Plaintiff and HOA to file an appeal in this case. Indeed, Plaintiff already filed a Notice of Appeal in this case on August 12, 2015, and the HOA followed suit on August 26, 2015. *See Dkt. Nos. 76, 79.* However, the Ninth Circuit issued an order that it might lack jurisdiction if the district court's order was not a final appealable order. Order, *Williston Investment Group v. JP Morgan Chase Bank, N.A.*, No. 15-16615 (9th Cir. Aug. 20, 2015). Plaintiff thereafter voluntarily dismissed its appeal, acknowledging that there was no final judgment in this case. Order Granting Motion for Voluntary Dismissal, *Williston Investment Group v. JP Morgan Chase Bank, N.A.*, No. 15-16615 (9th Cir. Sept. 14, 2015). The HOA also voluntarily dismissed its appeal, acknowledging that there was no final judgment in this case. *See Dkt. No. 91.*

16. In order to direct entry of a final judgment in a multiple-claim action, a court must consider two factors:

a. *First*, the court must determine whether the judgment is final "in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'" *Curtiss-Wright Corp. v. Gen. Electric Co.*, 446 U.S. 1, 7 (1980) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)).

b. *Second*, the court must decide whether there is any just reason for delay. *Id.* at 8. When evaluating whether there are just reasons for delay, the court should

1 consider the equities involved, exercising discretion “in the interest of sound
 2 judicial administration.” *Id.* (quotations omitted).

3 17. A Rule 54(b) Judgment is appropriate here for three reasons:

- 4 a. *First*, the Order resolved the central legal question underpinning all the claims
 5 asserted by or against Freddie Mac and FHFA—whether 12 U.S.C. § 4617(j)(3)
 6 precludes a homeowner’s association foreclosure sale conducted under Nev. Rev.
 7 Stat. § 116.3116(2) from extinguishing Freddie Mac’s property interest.
- 8 b. *Second*, there is no just reason to delay the finality of the judgment, and the
 9 equities favor finality. The central legal issue in this case is not yet before the
 10 Ninth Circuit, and its resolution is necessary to determine whether any of the
 11 remaining claims in this case have merit. The Ninth Circuit’s review will hasten
 12 the day when the parties have final clarity regarding their rights to the Property.
- 13 c. *Third*, a final judgment pursuant to Rule 54(b) would also promote judicial
 14 efficiency. The same legal issue regarding the application of the Federal
 15 Foreclosure Bar to Nevada HOA sales is pending in over thirty actions in this
 16 District and hundreds more in Nevada state court. If Plaintiff appeals the Rule
 17 54(b) judgment, as it has already attempted to do, the Ninth Circuit’s review of
 18 this issue would provide binding guidance for this and other courts in this District
 19 and persuasive guidance to the state courts presiding over related actions.
 20 Furthermore, resolution of the remaining claims pending in this case before an
 21 appeal would be an inefficient use of resources, as the Parties would be required
 22 to brief, and the Court decide, motions for summary judgment to resolve claims
 23 whose resolution is already predetermined by the logic of the Court’s Order.

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18. Accordingly, the Parties respectfully request that the Court enter a judgment reflecting the conclusions of the Court's Order and designate it final and appealable pursuant to Federal Rules 54(b) and 58(a).

DATED this 23rd day of November, 2015.

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11 **[PROPOSED] ORDER**

12 Pursuant to the Stipulation above, and for good cause appearing therefor,

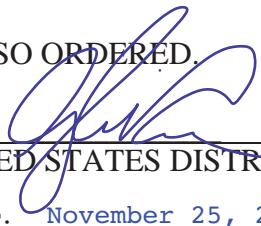
13 **IT IS HEREBY ORDERED** that the Clerk of Court enter a Judgment reflecting the Order
14 issued on July 13, 2015 (Dkt. No. 75), stating that:

15 IT IS ORDERED that 12 U.S.C. § 4617(j)(3) preempts Nevada Revised Statutes
16 § 116.3116 to the extent that a homeowner association's foreclosure of its super-
17 priority lien cannot extinguish a property interest of Freddie Mac while it is under
18 FHFA's conservatorship. Accordingly, the HOA's foreclosure sale of its super-
19 priority lien did not extinguish Freddie Mac's interest in the Property secured by the
20 Deed of Trust or convey the Property free and clear to Plaintiff.

21 IT IS FURTHER ORDERED that Freddie Mac, FHFA, Chase, and MERS are
22 granted summary judgment on Plaintiff's claim for declaratory relief / quiet title.
23 Freddie Mac, FHFA, Chase, and MERS are also granted summary judgment on
24 their quiet title and declaratory judgment counterclaims.

25 IT IS FURTHER ORDERED that the Court determines that this is a final and
26 appealable judgment pursuant to Federal Rule of Civil Procedure 54(b) as there is
27 no just reason for delay.

28 IT IS SO ORDERED.

29 
30

31 UNITED STATES DISTRICT JUDGE

32 DATE: November 25, 2015
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